

# MISSISSIPPI DIVISION OF MEDICAID

## Eligibility Policy and Procedures Manual

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### 304.06 STANDARD TRUSTS

Standard trust policy is applicable to trusts or conservatorships established prior to March 1, 1987, and/or trusts that do not meet the criteria of OBRA-93 or MQT trusts, regardless of the date established. In addition, testamentary trusts where the Medicaid client is the beneficiary are also standard trusts.

Whether the trust is counted as a resource depends on the client's role as beneficiary or trustee and the specific terms of the trust. In all situations listed below a copy of the trust agreement or court documents must be obtained for review:

#### 304.06.01 MEDICAID CLIENT IS TRUSTEE

Generally, a person appointed as a trustee cannot use any of the funds in the trust for his/her own benefit. Thus, an individual can be a trustee of a valuable trust and not be able to receive money from the trust since he/she has no access to the funds for personal use. When the trustee has no access to the funds for personal use, the trust is not a resource to the client who is the trustee.

However, under certain circumstances the trust is a countable resource to the client who is the trustee. Count the trust as a resource, regardless of whose funds were originally deposited into the trust, if the client:

- Is the trustee, and
- Has the legal ability to revoke the trust and
- Use the money for his own benefit.

Also, consider the trust a resource to the client if either the client or living-with spouse (eligible or ineligible) is the person who created the trust and has the right to dissolve it and use the funds for his own benefit. Where trust principal is considered a resource to the trustee, count the total value of the trust and count any interest or distributions as a resource the month following the month of receipt. Do not count as income any withdrawals made from the trust by the trustee since the funds have already been counted as a resource.

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### 304.06.02 MEDICAID CLIENT IS BENEFICIARY

#### Restricted Access to Principal

If the client is the beneficiary of the trust and the client's access to the trust principal is restricted, meaning only the trustee or the court can invade the principal; the principal of the trust does not count as a resource to the client. Count all payments made to, or on behalf of, the client from a restricted trust as income.

#### Unrestricted Access to Principal

Count the trust as a resource if the client is trust beneficiary and has unrestricted access to the principal of the trust. In this situation, payments from the trust to the beneficiary are not counted as income since the funds have already been counted as a resource. The payments from the trust are conversion of a resource.

#### Authority for Discretion by Trustee

The authority for discretion by the trustee in the use of trust funds, including invasion of the principal for support and maintenance of the beneficiary, does not mean that the principal is available to the client and, as such, it should not be counted as a resource. Only the income or resource(s) that is available to the client via the trustee's discretion count for purposes of determining eligibility.

#### Trustee has Full Discretion

In cases where the trustee has "full discretion" in the use of trust funds, the trustee must specify, by way of a written and signed statement for the case record, what arrangements exist or will be made to release funds or resources for the client's use.

As outlined above, any payments made to, or on behalf of, the client are counted as income unless the trustee states the client has unrestricted access to use of the trust funds; in which case, the funds are a countable resource.